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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,242	12/06/2001	Paul Douglas Becherer	8202	5768
1688	7590	10/10/2003	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI			SUGARMAN, SCOTT J	
763 SOUTH NEW BALLAS ROAD			ART UNIT	
ST. LOUIS, MO 63141-8750			PAPER NUMBER	

2873

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/010,242

Applicant(s)

BECHERER ET AL.

Examiner

Scott J. Sugarman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by either Lee et al (US 5,905,561) or Legerton et al (5,662,706). Lee et al teaches an artificial lens (10) having a generally circular lens body having an anterior surface and a posterior surface for engaging the eye, the lens having a substantially clear center area (20) for positioning over a pupil of the eye and an adjacent light restricting area (18) surrounding the substantially clear center area (20), the light restricting area (18) disposed to impinge upon and restrict the light that enters the pupil of the eye through the substantially clear area (20). There is a substantially clear area (17) surrounding the light restricting area (18). The light restricting area is darker in color (black; col. 11, lines 12, 13) than the clear center area. The clear center area is approximately 2 to 4 mm in diameter (col. 7, lines 23-61; col. 8, lines 1-5) where the light restricting area can be 8 to 15 mm in diameter (col. 7, lines 56-61; col. 8, lines 1-5). The lens can have a power (col. 8, lines 16-24). Lens materials include a hard, gas permeable material, a soft, flexible material or a combination of both (col. 7, lines 62-66). Legerton et al is a similar disclosure (same Applicants) except that dimensions of the clear center area and

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the light restricting area are given. A 2-4.2 mm clear center area and an annular mask up to 4 mm in a radial direction is taught (see claims 6 and 12). The intended use of ameliorating undesired effects of an ophthalmological procedure performed on the eye would be inherent in the lens of Lee et al or Legerton et al, since the structural equivalents would provide the same result.

Claims 16-30 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoyan (US 5,428,412). Stoyan teaches a lens and method that include using a lens after an earlier fitted lens that changes the shape of a cornea where the lens has a substantially circular lens body having an anterior and a posterior for engaging the eye, the posterior surface further has a relatively flat center area for positioning over the pupil of the eye and a second area adjacent the relatively flat center area having a radius of curvature the same or less than that of the relatively flat center area, where the posterior surface of the lens conforms to the shape of the cornea of an eye which has been altered by an earlier ophthalmological procedure (cornea shaping lens) (col. 4, line 62-col. 5, line 2). The various lens parameters are taught at col. 3, line 10-col. 4, line 61.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott J. Sugarman whose telephone number is (703)308-4821.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

  
Scott J. Sugarman  
Primary Examiner  
Art Unit 2873

sj  
September 28, 2003

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